

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:05-CR-142
)	
ROBERT SMITH,)	(PHILLIPS/SHIRLEY)
)	
Defendant.)	

ORDER

This case is before the Court on October 22, 2009, for a hearing on defense counsel's Motion for Appointment Pursuant to Criminal Justice Act, [Doc. 116], filed on September 14, 2009, and referred [Doc. 117] to the undersigned on September 16, 2009. See 28 U.S.C. § 636(b). Assistant United States Attorney Melissa M. Millican appeared on behalf of the government. Retained Attorney Robert L. Vogel represented the Defendant, who was also present. The motion was initially filed under seal, but the Court determined and counsel agreed that it could be unsealed. Accordingly, the Defendant's Motion for Appointment Pursuant to Criminal Justice Act [Doc. 116] is **UNSEALED**.

In the motion, defense counsel asks to be appointed to represent the Defendant pursuant to the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. The Defendant initially qualified for and was appointed [Doc. 7] CJA counsel. In late January 2006, the Defendant's family retained Attorney Vogel to represent the Defendant through the remainder of the case. In his motion, Mr. Vogel states that the Defendant's family is no longer able to complete payment of the agreed upon fee. Counsel

states that he has represented the Defendant for over three years now and has exhausted the payment made by the family. He states that would like to complete the case.

At the hearing, AUSA Millican stated that the Government had no objection to defense counsel's request. The Defendant was sworn and questioned by the Court. The Court finds that the Defendant, who has been in continuous custody since his initial appearance on November 11, 2005, does not have the funds to hire counsel and still qualifies for appointed counsel. The Defendant would like Mr. Vogel to continue to represent him in this case. Accordingly, for good cause shown, defense counsel's Motion for Appointment Pursuant to Criminal Justice Act [**Doc. 116**] is **GRANTED**. Mr. Vogel will be appointed in a separate order.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge